



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 27, 2023

IN THE MATTER OF:

Appeal Board No. 626626

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 626624, 626625, and 626626, the claimant appeals from the decisions of the Administrative Law Judge filed November 10, 2022, which denied the claimant's application to reopen and sustained the initial determinations:

* disqualifying the claimant from receiving benefits, effective January 27, 2021, on the basis that the claimant refused offers of suitable employment without good cause; charging the claimant with an overpayment of \$4,500.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security

(CARES) Act of 2020; charging the claimant with an overpayment of \$2,010.00 in Pandemic Emergency

Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2)

of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$976.50 on the basis that the claimant made a willful misrepresentation to obtain benefits;

* disqualifying the claimant from receiving benefits, effective February 16, 2021, on the basis that the claimant refused an offer of suitable employment without good cause; charging the claimant with an overpayment of \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security

(CARES) Act of 2020; charging the claimant with an overpayment of \$1,608.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$781.20 on the basis that the claimant made a willful misrepresentation to obtain benefits;

* disqualifying the claimant from receiving benefits, effective February 28, 2021, on the basis that the claimant refused an offer of suitable employment without good cause; charging the claimant with an overpayment of \$3,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security

(CARES) Act of 2020; charging the claimant with an overpayment of \$1,373.50 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act of 2020; reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$656.03 on the basis that the claimant made a willful misrepresentation to obtain benefits;

* disqualifying the claimant from receiving benefits, effective March 4, 2021, on the basis that the claimant refused an offer of suitable employment without good cause.; charging the claimant with an overpayment of \$2,700.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to §

2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of \$1,206.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act of 2020; reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$585.90 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances on behalf of the claimant and the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant appeared at a hearing held June 1, 2022, but did not proceed because she wanted to find representation. After obtaining representation, the claimant applied to reopen by letter dated September 6, 2022.

OPINION: The credible evidence establishes that the claimant appeared but did not proceed at the June 1, 2022 hearing because she desired representation. A desire for representation constitutes good cause not to proceed at a hearing. The claimant subsequently found representation and applied to reopen within a reasonable time. Accordingly, we conclude that the claimant's application to reopen is granted.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the issues of refusal of an offer of suitable employment without good cause, recoverable overpayment of FPUC and PEUC benefits, willful misrepresentation and civil monetary penalty. The record was not sufficiently developed on the determinations that the claimant refused offers of suitable employment without good cause. The parties should have another opportunity to submit additional testimony and other evidence regarding this issue. Prior the remand hearing, the employer shall produce to the Hearing Section

and to the claimant any documentation establishing which days and shifts the claimant indicated she was available to work, and which days and shifts she was not available to work. The employer also shall produce any records showing that the claimant worked on Sundays. The claimant shall be questioned regarding the circumstances under which she worked Sundays, if at all, and any subsequent changes in circumstances that would affect her availability to work Sundays. The claimant shall be questioned with respect to whether she would have accepted the February 18, 2021 offer to work April 2 through April 5, 2021 if she had not had plans to go out of town that weekend and, if not, why not. The claimant shall be questioned regarding where she went that weekend and how she spent the day on Sunday, April 4, 2021. In addition, the claimant shall be questioned regarding the nature and extent of her medical problems,

the approximate date of onset of these problems, and how these problems affected her ability to work during the day or overnight, if at all. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

DECISION: The decisions of the Administrative Law Judge, insofar as they denied the claimant's application to reopen A.L.J. Case Nos. 022-12679, 022-12686, and 022-12687, are reversed.

The decisions of the Administrative Law Judge, insofar as they sustained the initial determinations, are rescinded.

In Appeal Board Nos. 626624, 626625, and 626626, the claimant's application to reopen A.L.J. Case Nos. 022-12679, 022-12686, and 022-12687 is granted.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of refusal of suitable offers of employment without good cause, recoverable overpayments of FPUC and PEUC benefits, willful misrepresentation and civil monetary penalty, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of refusal of suitable offers of employment without good cause, recoverable overpayments of FPUC and PEUC benefits, willful misrepresentation and civil monetary penalty, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER